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7
8 **UNITED STATES DISTRICT COURT**
WESTERN DISTRICT OF WASHINGTON

9
10 AXCESS GLOBAL SCIENCES, LLC,

11 Plaintiff,

12 v.

13 SALES VENUE, INC. dba SNAP
14 SUPPLEMENTS, VLADIMIR
15 NESTERENCO, and MAX
16 MIKHAYLENKO,

17 Defendants.

18
19 **Case No: _____**

20
21 **COMPLAINT FOR PATENT**
INFRINGEMENT

22
23 **JURY TRIAL DEMANDED**

24 Plaintiff Axcess Global Sciences, LLC (“AGS” or “Plaintiff”) complains and alleges the
following against Defendants Sales Venue, Inc. dba Snap Supplements (“Snap”), Vladimir
Nesterenco (“Nesterenco”), and Max Mikhaylenko (“Mikhaylenko”) (collectively, “Defendants”).

25
26 **NATURE OF THE CLAIMS**

27 1. This is an action for patent infringement under 35 U.S.C. §§ 1, *et seq.*

1 2. Plaintiff is the owner of U.S. Pat. Nos. 11,241,403 (the “‘403 Patent”) and
 2 11,020,362 (the “‘362 Patent”) (collectively, the “Asserted Patents”). *See* Exs. A and B. The
 3 Asserted Patents include claims for unique formulations of the health supplement Beta-
 4 Hydroxybutyrate (“BHB”).

5 3. Defendants make, use, offer for sale, sell, and/or import a product called Snap BHB
 6 Keto Burn (“Snap BHB”) that infringes the Asserted Patents:



Supplement Facts	
Serving size 2 capsules	
Servings per container 30	
Amount Per Serving	% Daily Value
Calcium (as Calcium Beta-Hydroxybutyrate) 28mg	2%
Magnesium (as Magnesium Beta-Hydroxybutyrate) 13mg	4%
Sodium (as Sodium Beta-Hydroxybutyrate) 52mg	2%
Ketosis Kickstarter Blend 770 mg	*
Sodium Beta-Hydroxybutyrate	*
Calcium Beta-Hydroxybutyrate	*
Magnesium Beta-Hydroxybutyrate	*
Green Tea Leaf Extract (98% Polyphenols, 50% EGCG)	*
Potassium Chloride	*
Capsimax® (Red Pepper Extract)	*

* Daily Value Not Established

Other Ingredients: Vegetable capsule (hydroxypropyl methylcellulose),
 Microcrystalline Cellulose, Vegetable Magnesium Stearate

<https://snapsupplements.com/keto>

16 4. Plaintiff is a direct competitor of Defendants in the dietary supplements market and
 17 specifically for BHB and ketone supplements.

18 5. Plaintiff has suffered harm from Defendant’s infringement of the Asserted Patents,
 19 including in the form of lost profits.

20 6. Plaintiff’s immediate, irreparable injuries have no adequate remedy at law, and
 21 Plaintiff is entitled to injunctive relief and up to three times its actual damages and/or an award
 22 of Defendant’s profits, as well as costs and reasonable attorney fees.

THE PARTIES

7. Plaintiff AGS is a Utah limited liability company with a principal place of business at 2157 Lincoln Street, Salt Lake City, UT 84106.

8. Defendant SalesVenue, Inc. dba Snap Supplements is a Delaware corporation with a principal place of business at 11012 NE 39TH St., Suite C5, Vancouver, WA 98682-6791.

9. On information and belief, Defendant Nesterenco is a Washington resident residing in or near the city of Vancouver, WA. Defendant Nesterenco is a co-founder and CEO of Snap Supplements, LLC which, on information and belief, is an affiliate of SalesVenue, Inc. Prior to March 14, 2022, Defendants operated Snap Supplements as a limited liability company—Snap Supplements LLC. On information and belief, on March 14, 2022, Defendants voluntarily dissolved the LLC, yet continue to operate Snap Supplements out of the same facility located at 4207 NE 78th St, #190, Vancouver, WA 98665.

10. On information and belief, Defendant Mikhaylenko is a Washington resident residing in or near the city of Vancouver, WA. Defendant Mikhaylenko is a co-founder and COO of Snap Supplements, LLC which, on information and belief, is an affiliate of SalesVenue, Inc. Prior to March 14, 2022, Defendants operated Snap Supplements as a limited liability company—Snap Supplements LLC. On information and belief, on March 14, 2022, Defendants voluntarily dissolved the LLC, yet continue to operate Snap Supplements out of the same facility located at 4207 NE 78th St. #190, Vancouver, WA 98665.

JURISDICTION

11. This matter arises under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.* Thus, the Court has federal question subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338.

12. The Court has personal jurisdiction over the Defendants, and venue is proper in this District pursuant to 28 U.S.C. § 1400(b), at least because the Defendants reside in this District.

1 have a regular and established place of business in this District, have employees in this District,
2 and committed a substantial portion of the misconduct giving rise to this action from within this
3 District.

4 **BACKGROUND**

5 13. Plaintiff is a leader and innovator in the field of exogenous ketones and ketogenic
6 precursor supplement products. These products aid the body in producing and sustaining elevated
7 levels of ketone bodies in the blood and assist in the body's transition into nutritional ketosis.
8 Plaintiff has patent rights in many unique formulations of BHB, including those claimed in the
9 Asserted Patents.

10 14. Defendants make, use, advertise, offer for sale, sell, and/or import Snap BHB with
11 a formulation that infringes Plaintiff's exclusive rights in the Asserted Patents.

12 15. Defendants offer for sale and sell Snap BHB on their website
13 (www.snapsupplements.com/keto) and the websites of third-party retailers like GNC
14 (www.gnc.com/591331.html), Walmart (www.walmart.com/ip/1798657894), and Amazon
15 (www.amazon.com/dp/B07JJYD2X3/).

16 16. On information and belief, Defendants have made, used, offered for sale, sold,
17 and/or imported Snap BHB continuously since at least December 2018.

18 17. Plaintiff has no prior relationship with Defendants and only learned of the
19 infringement alleged herein after retaining outside counsel to investigate other, unrelated
20 infringements of Plaintiff's intellectual property.

21 18. Defendants' infringements have injured Plaintiff. Plaintiff's immediate, irreparable
22 injuries have no adequate remedy at law, and Plaintiff is entitled to injunctive relief and up to
23 three times its actual damages and/or an award of Defendant's profits, as well as costs and
24 reasonable attorney fees.

FIRST CAUSE OF ACTION
Patent Infringement – '403 Patent
35 U.S.C. §§ 1, *et seq.*

19. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

20. Plaintiff owns all rights in the '403 Patent.

21. The '403 Patent is valid, enforceable, and was issued in full compliance of the patent laws of the United States.

22. Plaintiff and its licensees have marked their products in accordance with 35 U.S.C. § 287(a).

23. Without license or authorization, Defendants make, use, offer for sale, sell, and/or import Snap BHB containing compounds that infringe the '403 Patent.

24. On February 8, 2022, the '403 Patent, titled "Beta-hydroxybutyrate mixed salt compositions and methods of use" was duly and legally issued. A true and correct copy of the '403 Patent is attached as Exhibit A.

25. Snap BHB infringes at least claim 1 of the '403 Patent in the manner described below:

1. A composition for increasing ketone level in a subject, comprising:
a plurality of beta-hydroxybutyrate salts comprised of:

at least one beta-hydroxybutyrate salt selected from:
calcium beta-hydroxybutyrate; and
magnesium beta-hydroxybutyrate; and

at least one other beta-hydroxybutyrate salt selected from:
sodium beta-hydroxybutyrate;
potassium beta-hydroxybutyrate;
calcium beta-hydroxybutyrate;
magnesium beta-hydroxybutyrate; and
amino acid salts of beta-hydroxybutyrate.

1 wherein the beta-hydroxybutyrate salts comprise at least 20% by total
 2 weight of calcium beta-hydroxybutyrate and/or magnesium beta-
 hydroxybutyrate,

3 wherein the composition is in solid and/or powder form,

4 wherein the composition is free of medium chain fatty acids having 6 to 12
 5 carbons and glycerides or other esters thereof.

6 Keto Burn is your partner in kickstarting weight loss goals. Improved energy and
 7 unique ketone metabolites supports your diet and work out efforts to optimize
 ketosis and help turn fat to fuel.*

- 8 • Boosts energy*
- 9 • Helps turn fat into fuel*
- 10 • Promotes ketosis*
- 11 • Thermogenic*

12 <https://snapsupplements.com/keto>

13 Supplement Facts

14 Serving size 2 capsules
 15 Servings per container 30

16 Amount Per Serving	17 % Daily Value
18 Calcium (as Calcium Beta-Hydroxybutyrate) 28mg	2%
19 Magnesium (as Magnesium Beta-Hydroxybutyrate) 13mg	4%
20 Sodium (as Sodium Beta-Hydroxybutyrate) 52mg	2%
21 Ketosis Kickstarter Blend 770 mg	*
22 Sodium Beta-Hydroxybutyrate	*
23 Calcium Beta-Hydroxybutyrate	*
24 Magnesium Beta-Hydroxybutyrate	*
25 Green Tea Leaf Extract (98% Polyphenols, 50% EGCG)	*
26 Potassium Chloride	*
27 Capsimax® (Red Pepper Extract)	*
28 * Daily Value Not Established	

29 Other Ingredients: Vegetable capsule (hydroxypropyl methylcellulose),
 30 Microcrystalline Cellulose, Vegetable Magnesium Stearate

31 <https://snapsupplements.com/keto>

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Servings per container 30

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Sodium Beta-Hydroxybutyrate	*
Calcium Beta-Hydroxybutyrate	*
Magnesium Beta-Hydroxybutyrate	*
Green Tea Leaf Extract (98% Polyphenols, 50% EGCG)	*
Potassium Chloride	*
Capsimax® (Red Pepper Extract)	*

* Daily Value Not Established

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Sodium Beta-Hydroxybutyrate	*
Calcium Beta-Hydroxybutyrate	*
Magnesium Beta-Hydroxybutyrate	*
Green Tea Leaf Extract (98% Polyphenols, 50% EGCG)	*
Potassium Chloride	*
Capsimax® (Red Pepper Extract)	*

* Daily Value Not Established

Other Ingredients: Vegetable capsule (hydroxypropyl methylcellulose),
Microcrystalline Cellulose, Vegetable Magnesium Stearate

(Based on the ingredients listed, Snap BHB is sold as an encapsulated powder.)

<https://snapsupplements.com/keto>

Supplement Facts

Serving size 2 capsules
Servings per container 30

Amount Per Serving	% Daily Value
Calcium (as Calcium Beta-Hydroxybutyrate) 28mg	2%
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Other Ingredients: Vegetable capsule (hydroxypropyl methylcellulose),
Microcrystalline Cellulose, Vegetable Magnesium Stearate

<https://snapsupplements.com/keto>

26. Defendants have directly infringed claim 1 of the '403 Patent in the United States by making, using, offering for sale, selling, and/or importing Snap BHB in violation of 35 U.S.C. § 271(a). As such, Defendants are liable for infringement of the '403 Patent under 35 U.S.C. § 271(a).

27. Defendants have indirectly infringed the '403 Patent in this District and elsewhere in the United States by inducing others to make, use, offer for sale, and/or sell Snap BHB in violation of 35 U.S.C. § 271(b).

28. Defendants' infringement of the '403 Patent is knowing and willful and this case is exceptional, as evidenced by the fact that Defendants use the precise, patented formula of BHB protected by the '403 Patent.

29. Plaintiff has suffered harm as a result of Defendants' infringement of the '403 Patent, including in the form of lost profits and diverted sales and market share. Plaintiff is therefore entitled to recover damages sustained as a result of Defendants' wrongful acts in an

amount to be proven at trial.

SECOND CAUSE OF ACTION
Patent Infringement – '362 Patent
35 U.S.C. §§ 1, et seq.

30. Plaintiff incorporates and realleges each and every allegation of the preceding paragraphs as if fully set forth herein.

31. Plaintiff owns all rights in the '362 Patent.

32. The '362 Patent is valid, enforceable, and was issued in full compliance of the patent laws of the United States.

33. Plaintiff and its licensees have marked their products in accordance with 35 U.S.C. § 287(a).

34. Without license or authorization, Defendants make, use, offer for sale, sell, and/or import Snap BHB containing compounds that infringe the '362 Patent.

35. On June 1, 2021, the '362 Patent, titled "Beta-hydroxybutyrate mixed salt compositions and methods of use" was duly and legally issued. A true and correct copy of the '362 Patent is attached as Exhibit B.

36. Snap BHB infringes at least claim 1 of the '362 Patent in the manner described below:

1. A composition for increasing ketone level in a subject, comprising:

at least three beta-hydroxybutyrate salts selected from: sodium beta-hydroxybutyrate; potassium beta-hydroxybutyrate; calcium beta-hydroxybutyrate; and magnesium beta-hydroxybutyrate;

wherein the composition is in solid and/or powder form,

wherein the composition is free of medium chain fatty acids having 6 to 12 carbons and glycerides or other esters thereof.

1 Keto Burn is your partner in kickstarting weight loss goals. Improved energy and
 2 unique ketone metabolites supports your diet and work out efforts to optimize
 3 ketosis and help turn fat to fuel.*

- 4
- Boosts energy*
 - Helps turn fat into fuel*
 - Promotes ketosis*
 - Thermogenic*
- 5

6 <https://snapsupplements.com/keto>

7

8 Supplement Facts

9 Serving size 2 capsules

10 Servings per container 30

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13 Calcium (as Calcium Beta-Hydroxybutyrate) 28mg	2%
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Sodium Beta-Hydroxybutyrate	*
Calcium Beta-Hydroxybutyrate	*
Magnesium Beta-Hydroxybutyrate	*
Green Tea Leaf Extract (98% Polyphenols, 50% EGCG)	*
Potassium Chloride	*
Capsimax® (Red Pepper Extract)	*

14 * Daily Value Not Established

15 Other Ingredients: Vegetable capsule (hydroxypropyl methylcellulose),
 16 Microcrystalline Cellulose, Vegetable Magnesium Stearate

17 <https://snapsupplements.com/keto>

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* Daily Value Not Established

Other Ingredients: Vegetable capsule (hydroxypropyl methylcellulose),
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(Based on the ingredients listed, Snap BHB is sold as an encapsulated powder.)

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Green Tea Leaf Extract (98% Polyphenols, 50% EGCG)	*
Potassium Chloride	*
Capsimax® (Red Pepper Extract)	*

* Daily Value Not Established

Other Ingredients: Vegetable capsule (hydroxypropyl methylcellulose),
Microcrystalline Cellulose, Vegetable Magnesium Stearate

<https://snapsupplements.com/keto>

37. Defendants have directly infringed claim 1 of the '362 Patent in the United States

1 by making, using, offering for sale, selling, and/or importing Snap BHB in violation of 35 U.S.C.
2 § 271(a). As such, Defendants are liable for infringement of the '362 Patent under 35 U.S.C. §
3 271(a).

4 38. Defendants have indirectly infringed the '362 Patent in this District and elsewhere
5 in the United States by inducing others to make, use, offer for sale, and/or sell Snap BHB in
6 violation of 35 U.S.C. § 271(b).

7 39. Defendants' infringement of the '362 Patent is knowing and willful and this case is
8 exceptional, as evidenced by the fact that Defendants use the precise, patented formula of BHB
9 protected by the '362 Patent.

10 40. Plaintiff has suffered harm as a result of Defendants' infringement of the '362
11 Patent, including in the form of lost profits and diverted sales and market share. Plaintiff is
12 therefore entitled to recover damages sustained as a result of Defendants' wrongful acts in an
13 amount to be proven at trial.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff respectfully prays that the Court enter judgment in its favor and award
16 the following relief against Defendants:

17 A. A judgment that Defendants infringed the Asserted Patents directly and indirectly
18 by inducement;

19 B. A finding that the Defendants' conduct alleged herein was willful and that this case
20 is exceptional;

21 C. An order and judgment enjoining Defendants and their officers, directors,
22 employees, agents, licensees, representatives, affiliates, related companies, servants, successors
23 and assigns, and any and all persons acting in privity or in concert with any of them, from
24 infringing Plaintiff's patents;

D. An award of actual damages in an amount to be determined at trial for patent infringement.

E. Plaintiff's costs and attorneys' fees;

F. A judgment for treble damages and other punitive damages;

G. Any such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a jury trial on all matters triable to a jury.

DATED July 24, 2023.

/s/ Brian N. Platt

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